

## Rep. Nadler Lauds House Passage of ADA Amendments Act of 2008

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WASHINGTON,

D.C. — Congressman Jerrold Nadler (NY-08), Chair of the Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties today lauded the House for passing H.R. 3195, the Americans with Disabilities Act Amendments Act of 2008. That bill was adopted on a vote of 402 to 17.

“This bill will restore the Americans with Disabilities Act to its rightful place among this nation’s great civil rights laws,” said Rep. Nadler. “Its passage is long overdue. Countless Americans with disabilities have already been deprived of the chance to prove that they are qualified for a job, or that a reasonable accommodation would afford them the same opportunities to participate fully at work and in community life. I urge my colleagues in the Senate to act quickly on this vital legislation.”

Earlier today, Rep. Nadler spoke on the House floor in favor of the ADA Amendments Act of 2008. His full statement for the record follows:

“Madam Speaker, I want to commend the distinguished Majority Leader and Gentleman from Wisconsin, Mr. Sensenbrenner, for their leadership on this important legislation.

“H.R. 3195 would help to restore the Americans with Disabilities Act to its rightful place among this nation’s great civil rights laws.

“This legislation is necessary to correct Supreme Court decisions that have created an absurd Catch-22 in which an individual can face discrimination on the basis of an actual, past, or perceived disability and yet not be considered sufficiently disabled to be protected against that discrimination by the ADA. That was never Congress’s intent, and H.R. 3195 cures this problem.

“H.R. 3195 lowers the burden of proving that one is disabled enough to qualify for coverage. It does this by directing courts to read the definition broadly, as is appropriate for remedial civil rights legislation. It also redefines the term “substantially limits,” which was restrictively interpreted by the courts to set a demanding standard for qualifying as disabled. An individual now must show that his or her impairment “materially restricts” performance of major life activities. While the impact of the impairment must still be important, it need not severely or significantly restrict one’s ability to engage in those activities central to most people’s daily lives, including working.

"Under this new standard, for example, it should be considered a material restriction if an individual is disqualified from his or her job of choice because of an impairment. An individual should not need to prove that he or she is unable to perform a broad class or range of jobs. We fully expect that the courts, and the federal agencies providing expert guidance, will revisit prior rulings and guidance and adjust the burden of proving the requisite "material" limitation to qualify for coverage.

"This legislation is long overdue. Countless Americans with disabilities have already been deprived of the opportunity to prove that they have been victims of discrimination, that they are qualified for a job, or that a reasonable accommodation would afford them an opportunity to participate fully at work and in community life.

"Some of my colleagues from across the aisle have raised concerns that this bill would cover "minor" or "trivial" conditions. They worry about covering "stomach aches, the common cold, mild seasonal allergies, or even a hangnail."

"I have yet to see a case where the ADA covered an individual with a hangnail. But I have seen scores of cases where the ADA was construed not to cover individuals with cancer, epilepsy, diabetes, severe intellectual impairment, HIV, muscular dystrophy, and multiple sclerosis.

"These people have too often been excluded because their impairment, however serious or debilitating, was mischaracterized by the courts as temporary, or its impact considered too short-lived and not permanent enough — although it was serious enough to cost them the job.

"That's what happened to Mary Ann Pimental, a nurse who was diagnosed with breast cancer after being promoted at her job. Mrs. Pimental had a mastectomy and underwent chemotherapy and radiation therapy. She suffered radiation burns and premature menopause. She had difficulty concentrating, and experienced extreme fatigue and shortness of breath. And when she felt well enough to return to work, she discovered that her job was gone and the only position available for her was part-time, with reduced benefits.

"When Ms. Pimental challenged her employer's failure to rehire her into a better position, the court told her that her breast cancer was not a disability and that she was not covered by the ADA. The court recognized the "terrible effect the cancer had upon" her and even said that "there is no question that her cancer has dramatically affected her life, and that the associated impairment has been real and

extraordinarily difficult for her and her family.”;

“Yet the court still denied her coverage under the ADA because it characterized the impact of her cancer as “short-lived” — meaning that it “did not have a substantial and lasting effect” on her.

“Mary Ann Pimental died as a result of her breast cancer four months after the court issued its decision. I am sure that her husband and two children disagree with the court’s characterization of her cancer as “short-lived,” and not sufficiently permanent.

“This House should also disagree — and does — as is shown by the broad bipartisan support for H.R. 3195.

“H.R. 3195 ensures that individuals like Mary Ann Pimental are covered by the law when they need it. It directs the courts to interpret the definition of disability broadly, as is appropriate for remedial civil rights legislation. H.R. 3195 requires the courts — and the federal agencies providing expert guidance — to lower the burden for obtaining coverage under this landmark civil rights law. This new standard is not onerous, and is meant to reduce needless litigation over the threshold question of coverage.

“It is our sincere hope that, with less battling over who is or is not disabled, we will finally be able to focus on the important questions — is an individual qualified? And might a reasonable accommodation afford that person the same opportunities that his or her neighbors enjoy.

“I urge my colleagues to join me in voting for passage of H.R. 3195, as reported unanimously by the House Judiciary Committee.

“I yield back the balance of my time.”;